

EXHIBIT 2

Hunters Capital, LLC v. City of Seattle

Bates McKee

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUNTERS CAPITAL, LLC, et al.,)
)
Plaintiffs,)
)
vs.) No. 20-cv-00983-TSZ
)
CITY OF SEATTLE,)
)
Defendant.)

VIDEOTAPED VIDEOCONFERENCE DEPOSITION

UPON ORAL EXAMINATION OF

BATES MCKEE

Witness located in Seattle, Washington
(All participants appearing via videoconference.)

DATE TAKEN: AUGUST 24, 2022
REPORTED BY: CARLA R. WALLAT, CRR, RPR
WA CCR #2578; OR CSR #16-0443; CA CSR #14423

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1 Q. (BY MR. REILLY-BATES) Let's take a look at
2 the page 1, the end of the first paragraph. It says "I
3 have been -- also been observing these neighborhoods
4 for our professional purposes in valuation through the
5 work-from-home era spawned by the coronavirus pandemic
6 with particular focus subject properties and claims
7 starting with my engagement for this assignment in
8 May 2021, including several comprehensive comparative
9 visits. And the scope of my work included," et cetera,
10 et cetera.

11 So the question is: Your engagement was -- by
12 the City was in May of 2021, correct?

13 A. Correct.

14 Q. And you weren't working on this -- this
15 project before May of 2021, correct?

16 A. Correct.

17 Q. And this may seem obvious, but you didn't
18 start observing any of the neighborhoods that you
19 mentioned at the end of this paragraph before May of
20 2021, correct?

21 A. Oh, no. Certainly, I observe all the
22 neighborhoods that I can. So that's not correct.
23 That's my -- that's my job to observe real estate in
24 the Seattle area. So -- so I'd say that's not correct.

25 Q. Okay. When you say "I've observed

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1 plaintiffs' claims have damages that could extend into
2 the future past July 10th of --

3 A. Well, it would be presumptuous for me to say
4 when damages claims would extend. That's -- that
5 probably would be a legal concept. So I simply was --
6 part of my investigation was not limited to -- you
7 know, to a period of time.

8 Q. Okay. And you don't want to offer any legal
9 opinions in this case, do you, correct?

10 A. No.

11 Q. You're -- because you're not qualified as --
12 as an attorney, correct?

13 A. Is that an expert? I don't know. But
14 certainly not in my area of expertise other than, you
15 know -- other than I am qualified as an expert in
16 real estate appraiser -- as a real estate appraiser in
17 real estate related legal cases.

18 So I'm expected to understand, of course,
19 the -- and to -- and to appraise to a legal fabric
20 that's acceptable in -- by the courts. So I'm -- my
21 expertise does extend into the -- for instance, the
22 compensability, you know, issues.

23 I have to -- I have to read and understand at
24 a -- I guess you would say a layperson's legal level
25 but a high layperson's legal level the restraints on,

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1 you know -- on compensation, for instance.

2 Q. Okay. But you understand that you're not able
3 to offer a legal opinion that the Court can consider in
4 this case, correct?

5 A. That's right. That's correct. Well, I think
6 the Court can consider it, you know. When I cite, for
7 instance, the legal standards that I appraise to, I
8 wouldn't suggest that the Court doesn't consider it.
9 If the Court finds something flawed, the Court would,
10 you know -- it's -- it's frequent that I need to
11 testify to such things, for instance, what's -- you
12 know, when I -- what's the legal fabric for appraisal
13 and valuation.

14 So -- so while I'm not, you know -- while I'm
15 not -- while I wouldn't tender a legal opinion myself,
16 I would cite things such as, you know, jury
17 instructions and even case law.

18 Q. So is it possible that events that occurred
19 during CHOP could have caused damages that happened
20 after July 10th, 2020?

21 A. Well, I don't know what "damages" mean. That
22 means different things to different people. So I -- I
23 usually deal in the world of compensation as opposed to
24 damages. So I -- I guess I don't have an opinion about
25 that.

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1 the attorneys.

2 Q. Okay. Mr. McKee, can you answer this question
3 "yes" or "no," please: You are not qualified to offer
4 a legal opinion in this case, are you?

5 A. To -- I'm not sure I can answer that "yes" or
6 "no."

7 Q. A "yes" or a "no."

8 A. I'm not sure I can. I think I've tried to
9 answer that. I have to -- you know, I have to -- I
10 have to deal with -- with legal conclusions and with
11 the legal fabric when I -- when I address the appraisal
12 of, you know, temporary or permanent taking.

13 So I don't -- that's not an oppositional, you
14 know, level of understanding. And so my opinions show
15 up in the context of my real estate appraisals, not as
16 a pleading to the Court.

17 So I would say that I'm not qualified to
18 provide a legal pleading or, you know, to provide an
19 interpretation for the purpose of a Court
20 interpretation. That's in the domain of attorneys.
21 But I am required to -- to appraise legally under
22 the -- the fabric that's well established in eminent
23 domain.

24 So I have to -- those opinions or -- it's not
25 really my opinions. My conclusion -- my reading of

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1 the, you know, laws and, you know, informed by the
2 interpretation of case law is central to the work that
3 I do.

4 And so always subject to -- to legal
5 instruction myself, and I wouldn't tender an opinion to
6 the courts. But I -- but I would be expected to -- to,
7 you know, to appraise in a legal manner subject to my
8 interpretation.

9 It's like driving on the street. It's like --
10 I can't tell you, you know, about the nuances of the
11 enforcement of the speed limit or something, but I'm
12 expected to follow the speed limit and to understand
13 it.

14 So it's a -- of course, I would do things
15 legally to the best of my understanding, and in the
16 specific case of appraisals, then I'm, you know, -- I'm
17 required to -- to carefully follow the law.

18 Q. Mr. McKee, that was a "yes" or "no" question.

19 A. I'm sorry, I couldn't answer it. I -- again,
20 yes, I am not -- I am not qualified to tender an
21 opinion to the -- for the Court to find or for a trier
22 of fact to find. That is the domain of the attorneys.

23 Q. So you're unable to answer my question "yes"
24 or "no" whether you are qualified to offer a legal
25 opinion in this case; is that a correct statement?

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1 A. Well, I'm asking who are we offering it to;
2 the reader of the appraisal report or to -- or to the
3 courts?

4 And so I'm saying I -- I am required to
5 interpret it for the purpose of documenting my
6 appraisals, and I am not qualified to submit pleadings
7 to, you know, a court or a trier of fact. So I --
8 that's a "yes" and a "no," I think. Sorry.

9 Q. Let's go to the last paragraph of page 6. It
10 starts with "an owner has" a reasonable -- "a right to
11 'reasonable' access."

12 Do you see that? Could you take a moment to
13 review that paragraph, and let me know when you're
14 done?

15 A. Okay.

16 Q. Okay. And the last sentence of that paragraph
17 states, "While there may have been intermittent
18 impairment of certain types of" some access -- or, I'm
19 sorry, "of access to some areas due to periodic
20 vehicular restrictions, there was nothing approaching a
21 taking of all, or even a significant part, of access to
22 and utility of the properties."

23 Do you see that?

24 A. Yes.

25 Q. And did you personally draft this?

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1 population of the subject area were students, can you?

2 A. Correct.

3 Q. Let's take a look at page 9, the last
4 paragraph, you state, over -- "In my observation,
5 street-level activity with pedestrians and workers was
6 diminished everywhere, but particularly in the
7 previously-vibrant close-in neighborhoods such as the
8 CBD, Capitol Hill, Pioneer Square and South Lake Union.
9 The absence of pedestrian activity was particularly
10 noticeable for these neighborhoods and tenants in these
11 neighborhoods, as the empty streets signaled a troubled
12 and unpredictable real estate environment."

13 Do you see that?

14 A. Yes.

15 Q. Now, what is the basis of your observations
16 here?

17 A. Constantly observing. So a -- it's, you know,
18 virtually daily or weekly observation of street-level
19 activity in various neighborhoods as I appraise
20 properties.

21 Q. So -- so is that only your -- you're
22 physically going out to neighborhoods and -- and
23 looking at particular streets?

24 A. Yes, that's my job. It's only that. So
25 anyway, that's what I -- that's -- that's central to --

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1 you know, to -- my observations are, you know -- are
2 the basis for my work typically, so I don't mean to
3 make light of it.

4 Yes, it's my observations.

5 Q. Okay. So there's -- there's no -- no data in
6 support of -- to support those statements that there
7 was an absence of pedestrian activity in any of those
8 neighborhoods, correct?

9 A. Oh, no, I think there is data. There's quite
10 a wide variety of data that's available. There's, you
11 know -- there's cell phone data. There's sidewalk and
12 downtown, you know, DSA data. There's quite a variety
13 of data, so it -- you know, including published data
14 and what have you.

15 So while my observations provide the key for
16 the statement that you see there, you know, the data
17 certainly exists. I -- I -- I didn't attempt to
18 present all of the data. It wasn't necessary.

19 Q. And, in fact, you didn't actually review any
20 data, cell phone data, did you?

21 A. Oh, that's not true, so, I don't know -- I
22 don't know why you would say that. I constantly review
23 data.

24 Q. Well, you did not review any data relating to
25 the level of pedestrian activity in any Seattle

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1 neighborhoods?

2 A. No, that's not true. I don't know why you're
3 saying that. I -- I -- again, it's a daily or weekly,
4 you know -- it's constant. I'm constantly observing
5 the data. That's not correct.

6 Q. Okay. So what -- what data do you review
7 that -- that provides you a basis to say that there was
8 an absence of pedestrian activity in these
9 neighborhoods?

10 A. Yeah, I mean, I'm -- again, I read all the
11 published reports. There's data that's written, you
12 know -- there's -- there are published reports every
13 day about level of activity and level of occupancy. I
14 shouldn't say every day, but it's quite frequent in the
15 Puget Sound Business Journal and the Daily Journal of
16 Commerce and CoStar's reporting and, you know, data
17 that's cited by the Downtown Seattle Association and
18 the, you know -- there's -- there's a lot of data.

19 So, you know, it's not -- you know, it's not
20 accumulated in this report, but that doesn't mean I --
21 I don't have any data. It just means -- it just means
22 it wasn't necessary to include it.

23 Q. Okay. And -- and you, in fact, did not cite
24 any data or data sources that you relied upon in -- in
25 your report, did you?

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1 A. I cited specifically my observation which is a
2 data point. But, you know, I don't know if you would
3 invalidate my observations, but it's -- that's --
4 that's what I'm hired to do usually is to observe
5 things.

6 So those -- my citation was my observations,
7 but it's -- my observations include an observation of
8 the data on an ongoing basis. So it's not just the
9 streets. It's all the data.

10 Q. Can -- can you sit here -- as you sit here
11 today, can you tell us any of the publications that you
12 reviewed that support your statement that there was a
13 particular noticeable lack of pedestrian activity in
14 these neighborhoods?

15 A. I think I've said it. Downtown Seattle
16 Association provides data on -- you know, on pedestrian
17 count, for instance. The -- you know, the retail
18 facilities and the parking facilities that we appraise
19 provide very tangible data.

20 So I didn't cite the data here, but I observed
21 a lot of data, and it's broad. It's not a -- you know,
22 again, I think we get, you know, weekly at this point,
23 you know, here's -- here's what the percentage of
24 office data is.

25 There was a -- recently published in the Puget

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1 But the -- the issue at hand for -- at least
2 for, you know, compensation is fair market rent, which
3 does not premise the tenant. So it's very specific to
4 the issue at hand.

5 Q. And did you study any of the -- the leases of
6 the -- the plaintiffs' properties between the
7 plaintiffs and their tenants after June 2020 in this
8 case?

9 A. I was not provided with any leases.

10 Q. Okay. Do you know whether or not Hunters
11 Capital entered into it -- leases with its tenants
12 at -- in arm's length negotiations?

13 A. I'm not sure I understand. Is -- what is the
14 question? Is Hunters Capital a market participant that
15 would engage in arm's length negotiations; is that the
16 question?

17 Q. The question is -- strike that question.

18 Do you know whether or not the plaintiffs --
19 plaintiffs entered into leases with their tenants in
20 arm's length transactions?

21 A. No.

22 Q. Okay. And -- but you're not aware of any
23 facts that would suggest that they -- they did not
24 enter into any leases with their tenants for less than
25 fair market value; is that correct?

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1 are significantly impacted by any downturn."

2 What specific analysis did you conduct with
3 respect to parking revenues for your work?

4 A. Many, many properties that we appraised. That
5 properties have, you know, parking as a revenue
6 component. Many -- many urban properties do.

7 Q. Okay. And -- go ahead.

8 A. In -- go ahead.

9 Q. I -- I interrupted. I'm sorry.

10 A. No. In appraising the urban properties that
11 we appraise, we observe parking frequently.

12 Q. Okay. And how did you analyze the -- the
13 parking revenues that were from the subject area?

14 A. I don't believe I did.

15 Q. Okay. Did you conduct any specific analysis
16 with respect to the -- the parking rates within the
17 subject area?

18 A. Sure.

19 My observation, that includes an --
20 observations of, you know, of pedestrian activity, of
21 vehicle parking, of rates, so, you know, in -- in my
22 observation, absolutely. That's just part of it.

23 Q. What did you look at to study the parking
24 activity parking rates within the subject area?

25 A. Surface parking, occupancy and use of surface

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1 parking areas for, for instance, restaurants as opposed
2 to cars, the actual rates as published, which, you
3 know, I didn't find -- I didn't find it changed, but
4 that's not unusual. You don't stimulate demand when
5 there isn't a market by dropping rates.

6 So I found that the rates were, you know, were
7 similar as far as the asking rates go, but that the
8 occupancy in terms of occupancy, particularly a --
9 transient surface, you know, lots was diminished
10 commensurate with, you know -- commensurate with the
11 quieter overall environment and the lessened activity,
12 so...

13 Q. So my question was specifically about the
14 subject area --

15 A. Yes.

16 Q. -- around --

17 A. Yes.

18 Q. -- CHOP. What did you look at to -- to study
19 the occupancy rates in the subject area?

20 A. The -- the -- the surface parking lots as I
21 said.

22 Q. And where did you get that information?

23 A. That -- my personal observation.

24 Q. Okay. So you're talking about driving by a
25 parking lot and seeing that it's full or half -- half

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1 empty or empty, correct?

2 A. That's what we do, or walking by, both.

3 Q. And so -- but you'll admit that you -- you

4 couldn't have made any of those observations prior to

5 your engagement in May of 2021, correct?

6 A. Not for the subject properties, no, because I
7 didn't have a -- specific eyes on that. But -- but the
8 issue relates to the broader urban fabric that is not
9 just the subject neighborhood but the surrounding, so
10 lots of observation.

11 But relative to the subject neighborhood, no.

12 That was started in May of 2021.

13 Q. Okay. Let's scroll down to the bottom of
14 page 10 where it refers to a "Survey of Real Estate
15 Market Participants on Impacts of COVID and Protests on
16 Properties and Businesses."

17 Do you see that?

18 A. Yes.

19 Q. Now, why did you decide to conduct the survey
20 as part of this analysis?

21 A. It was -- it -- it seemed relevant. The issue
22 at hand was, you know, complex, and it was -- it was to
23 try to discriminate, you know, additional impact, if
24 any, of -- of a specific set of events relative to the
25 broader, you know, real estate context of what was

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1 are well known -- you know, these are well-known
2 commercial real estate people. So I -- I don't have --
3 you know, I'm not friends with any of them. I wouldn't
4 call them acquaintances. Professional acquaintances, I
5 guess.

6 Q. So you've worked with -- with some of these
7 individuals, correct?

8 A. Yes.

9 Q. Have -- have any of these individuals hired
10 your business or you to perform any work for them?

11 A. Oh, gosh. Often -- usually, if we're hired to
12 do work on property valuation, it's usually by the
13 financial institutions. It would be less normal to be
14 hired by the individuals.

15 Let me take a quick look on this. We did some
16 work indirectly for Art Langley who owns the -- you
17 know, Salvation Army. But again, that wasn't -- that
18 wasn't Art who hired us to do that.

19 We've appraised properties in the past owned
20 by Hal Griffith and owned by Ed Kim. And, again, I
21 don't believe we've worked directly for them. Or as a
22 company, we may have, but I -- I haven't. And, again,
23 in 31 years of business, a lot of these guys have been
24 around a long time. So they're familiar to us.

25 I probably appraised some of Wright's, you

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1 know, restaurants in the past, but, again, I don't
2 think directly for him. So -- so I would say -- I'm --
3 well, I'm not certain. I would say that we -- we
4 probably appraised properties that they own or manage
5 and -- and probably not for them. There may be
6 exceptions.

7 Q. Okay. Now, did you rely upon this survey at
8 all to reach your conclusion at the end of this section
9 that COVID had a greater impact than CHOP did on -- on
10 rents?

11 A. Yes, to some extent, uh-huh.

12 Q. And what did you do to ensure that the people
13 you were surveying owned property that was located
14 within the subject area?

15 A. We weren't necessarily trying to find owners
16 within the subject area. That would have, I think,
17 been potentially, you know, improper for us. So we
18 were -- we were not targeting the subject area
19 specifically.

20 Q. And were any of these people you surveyed
21 people or -- people that owned businesses or operated
22 businesses that were located in the subject area?

23 A. Possibly. I don't know where all the
24 restaurants, you know, are. There's -- you know, some
25 of these people own or manage, you know, many

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1 properties. So I -- it was -- you know, we weren't
2 trying to prompt a response. So we were throwing in
3 the various issues including, you know, sort of civil
4 unrest and to the -- you know, into the equation of
5 things we were interested in, what was influencing
6 properties in, you know, in mid 2020.

7 So, again, we -- due to confidentiality, we
8 were not identifying, you know, who we were working
9 for, what we were doing. So we weren't directly
10 soliciting that.

11 Q. So as you sit here today, you can't identify a
12 single property that was within the subject area that
13 was owned or managed by one of the individuals listed
14 on pages 14 and 15 of Exhibit 1?

15 A. That's correct. These are simply people who
16 have a broad spectrum of -- you know, of knowledge,
17 ownership and management through the metro area and
18 were, you know, actively involved in the commercial
19 real estate market in the urban areas. So it's -- it
20 was not targeted towards the subject, you know,
21 neighborhood.

22 Q. Okay. Now, the word "CHOP" only appears --
23 is -- is only referenced by four individuals.

24 Did you realize that?

25 A. Did I realize what?

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1 Q. That the word "CHOP" is only referenced by
2 four of the individuals that you surveyed.

3 Are you aware of that?

4 A. I suppose so. I've read the survey results.

5 Q. Okay. Well, you have no reason to doubt that
6 the word "CHOP" only appears in four --

7 A. Right.

8 Q. Correct?

9 A. Correct.

10 Q. And we can assume that if there's nothing
11 about CHOP in the other entries that they didn't talk
12 about CHOP, correct?

13 A. Or didn't respond or didn't have an opinion,
14 correct.

15 Q. Okay.

16 A. And, again, we were interested in civil unrest
17 in general and, obviously, Capitol Hill was not the
18 only place that had happened. That was also a
19 factor in downtown Seattle. So it was -- our attempt
20 to -- to find what was sort of -- the cause and effect
21 of the various factors that were at hand was fairly
22 broad. So I think that's not surprising, you know.

23 Many people wouldn't have an opinion about
24 that or wouldn't have been in the neighborhood. So --
25 or wouldn't have been familiar -- as familiar with the

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1 is really -- you know, if you ask somebody what is
2 Capitol Hill, you'll get quite a different variety of
3 responses depending upon how they think about it.
4 Most -- most real estate participants would think of
5 Capitol Hill as starting on the east side of probably
6 I-5.

7 So here we're not -- you know, we're focused
8 on some zone that's sort of a subset of Capitol Hill, I
9 guess you would say. And, you know, the -- the
10 Pike/Pine corridor, obviously, was, you know -- was hit
11 hard. And is not part of CHOP.

12 But I think he's -- you know, I think he's
13 referring to -- you know, and again, that was -- that
14 was noticeable as was downtown. A lot of the
15 activation comes from the, you know, interplay between
16 downtown and the Pike/Pine corridor which is really an
17 extension of downtown. So I don't think he's saying
18 anything surprising there.

19 Q. So -- and -- and from your personal
20 experience, you're aware that protesters would often go
21 between CHOP and downtown using the Pike/Pine corridor.

22 Is that a fair statement?

23 A. Oh, I don't know. That's a common way to walk
24 between the two. That's a question -- my -- my
25 impression is that it was a -- you know, it was a

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1 instances or four individuals as you state.

2 Q. Okay. Okay. And were -- were there any
3 instances where Cap Hill was mentioned that they were
4 actually referring to CHOP that you're aware of?

5 A. Well, of course, you know, CHOP is in, you
6 know, Cap Hill. So, I don't want to, you know,
7 speculate what somebody means when they say
8 "Capitol Hill," other than it includes CHOP, right.

9 Q. Okay. You wouldn't speculate that because
10 somebody referred to Capitol Hill that they're
11 referring to CHOP, correct?

12 A. Well, I think I said the opposite. Cap Hill
13 does include CHOP. So I would think they were talking
14 about, you know, CHOP and other locations when they
15 said "Cap Hill."

16 Q. Now, did any of these individuals say anything
17 else about CHOP that's not reflected in -- on pages 14
18 or 15 of your expert report?

19 A. Not to the best of my knowledge.

20 Q. And you chose these individuals because they
21 had expertise -- some form of expertise in -- in the
22 real estate market, correct?

23 A. I asked Austin to interview individuals who
24 would be knowledgeable about the -- the close-in urban
25 real estate market.

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1 Q. Okay. Did you give a him a list of people to
2 interview?

3 A. No.

4 Q. How did he pick -- do you know how he -- he
5 determined people to pick?

6 A. Well, he had a long list. He had a -- the --
7 you know, of people that he had previously interacted
8 with or that he was comfortable calling and he -- I
9 don't know, he called about, you know, 30 people, I
10 think, and was, you know, again, in a -- in a context
11 of -- of a, you know, an overall survey where we're
12 trying to determine what's happening mostly with retail
13 space, you know, in the urban areas. I -- you know, I
14 think that's what he wanted to concentrate on.

15 And obviously, you know, that's a -- when we
16 look at the claims, it was all about, you know,
17 restaurants and, you know, and street-level businesses,
18 you know, a lot of it was. So I think that was his
19 focus was people who were knowledgeable about urban
20 street-level business.

21 Q. Okay.

22 A. And -- but I didn't -- I didn't guide him
23 on -- I didn't -- I didn't tell him who or didn't --
24 didn't really give any other boundaries to that. So,
25 people that -- people that would talk to him, you know,

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1 A. Yes. I think you can see the boundaries here
2 that were used for that, so...

3 Q. Okay. So am I to understand that the subject
4 area that you used for your study is from Denny in the
5 north to Union in the south and Broadway in the west to
6 14th in the east?

7 A. For the Yardi -- sorry, for the -- for the --
8 for the Yardi portion of the study, 50 plus unit
9 apartments, I believe, yes. The other -- you know, the
10 boundaries are mostly imposed by the data providers, so
11 they were various -- and I think there's maps of the
12 other ones.

13 And so that was just one part of the study, of
14 course.

15 Q. So are you saying that you used different --
16 different boundaries for the subject area based on the
17 different providers that you used?

18 A. Yes, that -- that the providers have their
19 own, you know, boundary rules and that we didn't go and
20 individually isolate properties one by one and study
21 them ourselves. We used -- you know, we used the
22 providers, Commercial Analytics and Yardi and -- and
23 CoStar, so...

24 Q. Okay. So for Commercial Analytics, what were
25 the boundaries that you used?

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1 A. I believe Commercial Analytics has the
2 distinction of -- of Capitol Hill at large, and I think
3 that's probably discussed in the report. Do you want
4 me to look at that?

5 So let's see. They have different
6 methodologies and data sources.

7 Q. What page are you referring to?

8 A. I'm looking at page 21.

9 Q. Okay. Okay. Does it tell us what boundaries
10 Commercial Analytics used for the boundaries for the
11 subject area on page 21?

12 A. I was thinking that it did, but I don't see it
13 in here.

14 Q. Okay.

15 A. So my understanding is that Commercial
16 Analytics includes sort of all Capitol Hill and their
17 boundaries, so this is an examination of Capitol Hill
18 including, you know, the CHOP area but not excluding
19 other areas of Capitol Hill. And that's -- that's
20 their boundary conditions.

21 Q. So if -- if I understand the data that comes
22 from Commercial Analytics that refers to the subject
23 area refers to the entire area of Capitol Hill?

24 A. Yes.

25 Q. Okay. And --

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1 page 30. Would -- wouldn't you agree?

2 A. It looks like it goes to 13th instead of 14th.

3 Q. That's correct. So the eastern boundary is --
4 is -- is 13th instead of 14th on this map on page 49,
5 correct?

6 A. Yes.

7 Q. So -- so, in fact, you're -- you're getting
8 data from two different subject areas, wouldn't you
9 agree, even though there's just a slight difference?

10 A. Three -- three different subject areas, but
11 each of the -- each of these is different.

12 Q. Correct.

13 A. Yeah.

14 Q. And wouldn't that make a difference in the
15 analysis that -- that you're conducting of the data to
16 have different subject -- different boundaries drawn
17 for the -- the subject areas?

18 A. It might slightly change the specifics.
19 Really, the purpose of this analysis is to see if you
20 can discriminate, you know, a difference that's not
21 explained by other factors such as outmigration, and
22 so, you know, the attempt is sort of a statistical
23 attempt that is not, you know, seriously impacted in my
24 opinion by slightly different boundaries.

25 I think the Commercial Analytics boundary,

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1 You know, Yardi allows -- you know, has individual, you
2 know, buildings as data points, so I'm -- I'm sure
3 that's available. But obviously I don't have it here.
4 It wasn't something that was of a consideration to me
5 or that wasn't important.

6 Q. And where -- where would that data be
7 available?

8 A. Through Yardi.

9 Q. But did you retain any of the data relating to
10 these specific locations depicted on page 30?

11 A. No, I believe Amy simply printed the maps that
12 were associated with them. So we weren't -- we weren't
13 interested in the specifics. We just wanted to give
14 good disclosure on the boundaries.

15 Q. So these balloons do not represent any
16 specific properties that you relied upon for data in
17 your study, does it?

18 A. We're relying on the aggregated data,
19 obviously. We -- we weren't looking at specific
20 properties.

21 Q. So -- but were you relying at -- upon
22 aggregated data for these specific -- these properties
23 depicted in -- with -- by these balloons here?

24 A. These are all the properties tracked by Yardi.
25 So it's -- we didn't select the buildings.

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1 Q. Are there no other buildings that are tracked
2 by Yardi within this location that was --

3 A. That's right. Yes. My understanding is this
4 is comprehensive.

5 Q. And so you didn't undertake to understand the
6 exact address of each one of these buildings, did you?

7 A. Correct.

8 Q. You didn't undertake to understand the -- the
9 nature of the -- the tenant that was located at any of
10 these specific addresses, did you?

11 A. No, certainly not. That would not be in the
12 scope of even an appraisal, and this was -- this was
13 broad analysis. This wasn't an appraisal. So
14 that definitely -- definitely we're not trying to
15 understand the specific tenants. At best we talked
16 about before -- would probably have been inappropriate
17 for us to -- they're in the claimant area.

18 Q. And you didn't -- you didn't seek to -- to
19 survey, for example, any of the -- of the properties
20 that are listed here in the subject area depicted on
21 page 30 to determine what their experience was in CHOP,
22 did you?

23 A. That's correct. We did not -- we were not
24 provided with that information, and it was not within
25 our scope to do that, so we -- we did not do that.

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1 A. Yes.

2 Q. And is there -- is there an ability to display
3 the -- the -- and collect the address information of
4 the properties that was used in -- in the data points
5 for your CoStar data?

6 A. I believe you can export, you know, by
7 property record probably. So -- or the -- at least to
8 some limited extent. They're -- they don't want -- you
9 know, they don't want -- they don't want people
10 exporting everything because it's their proprietary
11 data. But -- but I believe you can export individual
12 property records if you were to be granular.

13 Q. Okay. So if you could take a look at page 49,
14 I would appreciate that.

15 A. Okay.

16 Q. Okay. And page 49, again, is a map of the
17 subject area that was used for the CoStar data,
18 correct?

19 A. Yes.

20 Q. And page 49 does not show any locations on the
21 map of -- of where the specific properties were from,
22 correct?

23 A. Correct.

24 Q. And as you sit there today, you have no idea
25 which properties -- which addresses you used for your

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1 study, correct?

2 A. Well, I think they're depicted here, but I
3 don't have a list of addresses or properties.

4 Q. Okay. You don't have -- you don't have a list
5 of addresses and there aren't any dots or indications
6 on this map that show us where the properties are,
7 correct?

8 A. Correct.

9 Q. And in fact, there's not any other map in your
10 report that would show us that information, correct?

11 A. Correct.

12 Q. So there's no -- no map or address information
13 that would show us, for example, how close any of these
14 properties were to the East Precinct. Is that fair?

15 A. I'm not sure I understand the question. The
16 East Precinct has a specific location. So you could
17 take any other location and say, Here's where it is
18 compared to that location.

19 Are you saying by address search or by
20 geocoding or something -- some --

21 Q. Let -- let me ask the question again. Your
22 report does not have any address information or maps
23 depicting the property -- property addresses of the
24 CoStar data that you used for your study that would
25 show us the proximity of any specific property that was

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1 used in relation to the East Precinct, correct?

2 A. Yes.

3 Q. Okay. All right. What -- now, let's turn to
4 page 28 of your report, please.

5 MR. FARMER: Gabe, before you ask this
6 question, I was just going to note that I need to leave
7 for my hearing, so Ms. Iverson will take over defending
8 the deposition until I'm able to return.

9 MR. REILLY-BATES: Okay.

10 MR. FARMER: Thanks very much.

11 Q. (BY MR. REILLY-BATES) Okay. Are you on
12 page 28?

13 A. Yes.

14 Q. So this is a page describing what the Yardi
15 matrix is, correct?

16 A. Yes.

17 Q. And it states that the Yardi matrix only
18 gathers data three time a year, correct?

19 A. Normalized data three times a year. I think
20 they're probably gathering all the time, but that's
21 right.

22 Q. Okay. Do you know what specific time points
23 those are during the year?

24 A. Not offhand.

25 Q. And would you agree that the specific time --

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1 Q. Okay. Let's turn back to page 25 when you get
2 a chance. And we're on page 25 of Exhibit 1 which is a
3 page regarding Commercial Analytics data. And it says,
4 "Data provided by property and owners and managers and
5 anonymized by using market areas."

6 Do you see that?

7 A. Yes.

8 Q. Is that a fair statement of the data that you
9 received from Commercial Analytics?

10 A. Yes, to the best of my knowledge, that's
11 what -- that's what they say it is.

12 Q. Okay. So -- so you have no way of determining
13 who -- where the property locations are in the data
14 that you received from Commercial Analytics, do you?

15 A. Only in the product boundaries that they
16 defined.

17 Q. Right, which means --

18 A. Within the boundary of each neighborhood that
19 they define, that's right.

20 Q. Right. So you have -- you have no idea within
21 the boundaries that they've defined where the data
22 points are located, correct?

23 A. Well, as we sit here, of course not. But, I
24 mean, you know, we could go look for the -- you know,
25 the data that would fit their criteria. So I don't

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1 want to say that we -- it couldn't be done. But that's
2 not normally something we would do and not something
3 that we have in this file.

4 Q. Well, if your report says this data is
5 anonymized --

6 A. Right.

7 Q. -- so doesn't that mean that you cannot go
8 back in and figure out who -- who the data is linked
9 to?

10 A. No. It means that the individual data points
11 are not reported, so, you know, they're anonymous by
12 individual points, unlike -- for instance, I said at
13 CoStar, you could go in and look at the actual, you
14 know, here's the property or something like that.

15 But it's -- portion of the data points with
16 Commercial Analytics you cannot do that. Again, the --
17 they just define their survey as such that they tell
18 people, "Hey, we won't tell them about your specific
19 property, we'll just group it with a lot of other
20 properties, so that, you know -- so that you're part of
21 the statistical average."

22 And again, this is -- appraisers and market
23 analysts are using these for trends in this case,
24 not -- you know, not for the specific data points.
25 We're usually looking at what are the trends. We're

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1 making adjustments for time and doing things like that.

2 So this is not a -- that's not an impediment
3 from an appraisal viewpoint. It's just different than
4 going out and doing a rent survey which would -- which
5 we would actually select the comparable properties and
6 try to solve the value of any one property.

7 So this is for market analysis purposes, not
8 for -- not for appraisal purposes.

9 Q. Okay. And just to be clear, you didn't -- you
10 didn't conduct a -- a market survey where you looked
11 for comparable properties in this case to use, you
12 know, to analyze the rent rates in the subject area,
13 correct?

14 A. Correct. We didn't really have specific
15 subject properties. We just had a defined, you know --
16 or a sort of defined area, right? So it's not -- you
17 know, the -- the plaintiffs' specific claims, you know,
18 were -- you know, were properties but not a
19 comprehensive list of properties or anything.

20 So we didn't -- we didn't have a -- and we're
21 not -- and we weren't appraising anything, so we -- we
22 didn't attempt to do that level of sampling. We were
23 simply looking at the trends.

24 Q. Okay. And so the Capitol -- the Capitol Hill
25 area used by Commercial Analytics is -- is much larger

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1 the vacancy rate in the subject area was higher than
2 Belltown, wouldn't you?

3 A. Well, it went up less than, but started out
4 higher, yes. But, again, that's -- that pre- -- that
5 mostly predates the claim period here.

6 Q. Now, are you aware of whether or not Amazon --
7 Amazon's headquarters downtown are located within
8 Belltown?

9 A. Some of them are, yes. In the Belltown
10 market. That's --

11 Q. And are you aware that Amazon employs over
12 75,000 employees in the Seattle area?

13 A. Yeah. I mean, the Seattle area, I think
14 that's more like -- more like 50,000 in Seattle, but,
15 yes.

16 Q. And do you have any general idea as to the
17 number of -- of office employees that are working at
18 Amazon -- or were working in Amazon's headquarters in
19 Belltown at the beginning of the pandemic in
20 March 2020?

21 A. Yes.

22 Q. And how many approximately within --

23 A. Maybe 40,000.

24 Q. And --

25 A. That's between all of their buildings, so...

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1 Q. So do you think that -- well, do you know
2 whether Amazon had a work-from-home policy once the
3 pandemic started?

4 A. Oh, yes.

5 Q. And in fact, they continued their
6 work-from-home policy throughout all of 2020 and
7 through most of 2021, correct?

8 A. That is correct. But that doesn't affect the
9 vacancy rate. Right. That just means that the
10 majority of the market is occupied.

11 Q. So --

12 A. Vacancy is -- is by other tenants. That's not
13 Amazon.

14 Q. Wouldn't that affect -- well, wouldn't --
15 it wouldn't affect Amazon directly, but wouldn't it
16 affect other businesses that rely upon Amazon employees
17 to be in the neighborhood, shopping and buying things?
18 Wouldn't you agree with that?

19 A. Well, that's retail effect. That's not what
20 we're looking at here. Right?

21 Q. Well, the -- the map on the right are -- are
22 retail?

23 A. Oh, I thought you were talking about the left
24 on that. Yeah.

25 Q. So it would have -- Amazon work-from-home

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1 you know, to cure concrete on one part of a driveway or
2 something, and the mere inconvenience of having to go
3 through a bit of a construction zone would not be, you
4 know, legally compensable probably.

5 So it's -- it's very difficult because I think
6 the different accounts that you see, you know, I don't
7 have video accounts. I don't have -- I don't have the
8 level of detail that might be appropriate for a
9 specific property investigation.

10 The statement here is relative certainly to
11 the 5,000 property owners that were allegedly, you
12 know -- you know, within the CHOP zone that, you know,
13 and obviously that was highly variable and was -- you
14 know, there was concentration of -- you know, access
15 issues that affected certain streets which, you know, a
16 street being blocked on its own is not an
17 unreasonable -- you know, there's a standard of -- you
18 know, of circuitry access also, which is another jury
19 instruction standard.

20 So, you know, merely being circuitous to have
21 to get places may or may not be -- you know, rise to a
22 level. Also, I think there's a distinction to be made
23 between vehicular access and pedestrian access, and
24 that's an important distinction and, you know, both
25 accesses are -- you know, are legitimate to talk about

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1 REPORTER'S CERTIFICATE

2 I, CARLA R. WALLAT, CCR, CSR, RPR, CRR, the undersigned
 3 Certified Court Reporter, authorized to administer oaths and
 4 affirmations in and for the states of Washington (2578),
 5 Oregon (16-0443), and California (14423) do hereby certify:

6 That the sworn testimony and/or proceedings, a
 7 transcript of which is attached, was given remotely before me
 8 at the time and place stated therein; that any and/or all
 9 witness(es) were duly sworn to testify to the truth; that the
 10 sworn testimony and/or proceedings were by me stenographically
 11 recorded and transcribed under my supervision. That the
 12 foregoing transcript contains a full, true, and accurate
 13 record of all the sworn testimony and/or proceedings given and
 14 occurring at the time and place stated in the transcript; that
 15 a review of which was requested; that I am in no way related
 16 to any party to the matter, nor to any counsel, nor do I have
 17 any financial interest in the event of the cause.

18 WITNESS MY HAND AND DIGITAL SIGNATURE this 31st day of
 19 August, 2022.

20

21

22

23

24

25



[Handwritten signature over the seal]

CARLA R. WALLAT, RPR, CRR
 Washington CCR #2578, Expires 1/5/2023
 Oregon CSR #16-0443, Expires 9/30/2024
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